IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

CRL.A.No. 2194 of 2004(A)

AGAINST THE ORDER DATED 20.1.2004 IN A.NO.345/2003 AND A.NO..320/2003 of ADDL. SESSIONS COURT FAST TRACK (ADHOC)-II, PALAKKAD
CC.399/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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APPELLANT: APPELLANT

SANTHOSH, S/O.AVARANKUTTY,
CONVICT NO.9551, CENTRAL PRISON,
KANNUR.

BY ADV. ADV.K.K.RAJEEV(STATE BRIEF)

RESPONDENTS: RESPONDENT

THE STATE OF KERALA

BY PUBLIC PROSECUTOR SRI. C.M. NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

Crl.A.No.2194 OF 2004-A

Dated this the 11th day of December, 2006.

J U D G M E N T

Appellant is the first accused in C.C.No.399/2002 on the file of the Judicial Magistrate of First Class, Ottapalam. The appellant faced trial along with the 2nd accused for the offences punishable under Sections 457 and 511 of 380 read with Section 34 of the I.P.C. The allegation against the appellant and the 2nd accused is that they have broke open Jayanthi Ayurveda Clinic situated on the side of Shornur bye pass road, trespassed into the clinic and attempted to make theft from there between 6 p.m and 11 p.m in the night on 20.11.2002. The appellant along with the other accused were arrested at the spot by the Sub Inspector of Police, Shornur. To prove the case against the appellant and the other accused, the prosecution examined Pws 1 to 3 and relied on Exts.P1 to P4. Mos 1 and 2 were also produced. After closing the prosecution evidence, the appellant and the other accused were questioned under Section 313 of the Cr.P.C. The appellant admitted that he had entered in the clinic along with

the other accused for sleeping and not for making any theft. Relying on the evidence adduced by the prosecution, the trial court found the appellant and the other accused guilty of the offences punishable under Sections 457 and 511 of 380 read with Section 34 of the I.P.C and they were convicted thereunder and sentenced to undergo R.I for three years each under Section 457 and R.I for two years each under Section 511 of 380 read with Section 34 of the I.P.C. The trial court ordered the sentences shall run consecutively. The above conviction and sentences were challenged both by the appellant as well as the other accused in Crl.A.Nos.320 and 345 of 2003 before the Sessions Court and as per the judgment dated 20th January, 2004, the Additional Sessions Judge, Fast Track-II, Palakkad, confirmed the conviction and sentences awarded against the appellant and the other accused. Hence, this appeal is filed assailing the conviction and sentence awarded against the appellant from jail. Since the judgment of the trial court has been already challenged in appeal, this appeal ought to have been filed as revision under Section 401 of Cr.P.C. However, when the matter was filed through the jail authorities, the Registry of this Court had

numbered it as an appeal and it is posted for hearing today. On considering the fact that the appellant has already challenged the conviction and sentences awarded against him by the trial court before the Sessions Court, this petition is treated as a revision filed under the relevant provisions of the Code of Criminal Procedure.

2. Since there is no counsel for the petitioner of his own choice to argue the matter before this Court, a counsel from the State brief panel has been appointed to argue the matter for and on behalf of the petitioner. This Court heard both the counsel appearing for the petitioner as well as the Public Prosecutor. The learned counsel appearing for the petitioner submits that both the courts below have committed serious error in relying on the evidence of Pws 1 and 2 as the evidences of these witnesses are not corroborated with any independent evidence with regard to the offences alleged against the petitioner. Further, the learned counsel submits that since the sentence awarded against the appellant is excessive, this Court may take a lenient view in sentencing the petitioner.

3. The prosecution relies on the evidences of Pws 1 and 2 who are the owners of Jayanthi Ayurveda Clinic in which the petitioner and the other accused committed the offence. PW1 given evidence before the court that at about 6 p.m she had closed the clinic and gone for food. At about 11 p.m she came back to the clinic along with PW2, her assistant, as they used to sleep in the clinic itself during night, they have seen somebody inside the clinic and the lock of the clinic has been broken. PW1 had further stated that when they searched inside the clinic, they have seen that the petitioner and the other accused inside the clinic and all the materials kept in the clinic were got disturbed and the culprits have attempted to make theft from the clinic and immediately thereafter Pws 1 and 2 shouted and people of the locality came and the petitioner and the other accused were caught hold of . Subsequently they were handed over to the Sub Inspector of Police. The evidence of PW1 is also supported by that of PW2, who accompanied PW1 at the time of the incident. PW2 had stated that when he and PW1 came to the spot they have seen the lock of the clinic was broke open and they realised somebody was inside the clinic and

thereafter Pws 1 and 2 and other public assembled there, caught hold of the petitioner and the other accused. Immediately thereafter, the Sub Inspector of Police, PW3, came and arrested the petitioner and the other accused. The evidence adduced by PW3 would show that the he had conducted the investigation of the case and seized Mos 1 and 2, iron rod and lock, from the scene and after completing the investigation, he filed the final charge against the petitioner as well as the other accused. The trial court fully relied on the evidence of the prosecution witnesses and found the petitioner and the other accused guilty of the offences charged against them. The conviction and sentence passed against the petitioner and the other accused were challenged in appeal before the Sessions court. The Sessions Court after hearing the appeal found that the judgment of the trial court did not require any interference and thereby confirmed the conviction and sentence ordered by the trial court.

On a re-appreciation of the evidence, though not ordinarily permissible in revision, this Court satisfied that the evidences adduced by the prosecution against the

petitioner and the other accused are acceptable and the finding entered by the trial court is fully justifiable. Further it could be seen that since the two courts have already appreciated the evidence, this Court is not in a position to deviate from the findings entered by the courts below. Consequently, this Court finds no ground to interfere with the conviction entered against the petitioner. However, the counsel for the petitioner submits that the appellate court as well as the trial court have sentenced the petitioner to undergo imprisonment consecutively. This is, according to the counsel, is not justifiable and it is against the provisions laid down in Section 429 of the Cr.P.C. Considering these aspects this Court order that the sentences awarded against the petitioner in both counts shall run concurrently.

With the above modifications, the revision petition stands dismissed confirming the conviction.

K. THANKAPPAN, JUDGE.

Cl

K. THANKAPPAN, J.

CRL.A.NO.2194 OF 2004

JUDGMENT

11th December, 2006.